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SUB: Comments on Draft inspection and enforcement rules for minerals

Re: Public outreach meeting in Moab, Utah held August 7, 2003

COMMENTS ON PROPOSED NEW RULES

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Statement

I am a 63 year old fifth generation Utahn that was born and raised in Moab.

I was raised up as a miner and my grandfather was a miner in southeastern Utah, as was my father.

At the present time I am attempting to start a mining operation upon my lease upon State Trust Lands on the desert by Thompson Utah.

Because I have spent my time and money and because I am actively involved in the "Utah State Minerals Regulatory Program" I am a "real party in interest" who is actually and substantially interested in the subject matter as distinguished from one who has only a nominal, formal, or technical interest in or connection with it. In other words I am one of the governed, whereby, the right to govern is derived from the consent of the governed.

It is necessary to do a pilot test upon my state lease for purposes of evaluating the mining process and obtaining enough refined Humate material to sell in order to test the viability of the potential market.

My proposed pilot test consists mainly of a 100' X 50' evaporation pond and the proposed disturbed area will be less than 1/2 acre. In the general scheme of things my proposed pilot test is so minuscule as to be almost invisible but the socio-economic impact to our state of preventing me (and my kind) a chance at upward mobility are enormous.

I have submitted a "Notice of Intent" and applied to SITLA for permission to conduct my proposed pilot test.

Whereas, in order to get permission to mine I am compelled to submit two separate "Notices of Intent" to two separate state agencies (DOGMA and SITLA), whereof, I am required to undertake two duplicating, overlapping, and possibly conflicting compliance procedures.

Whereas, before attempting mining operations, it is necessary for me to know about and understand the need for duplicating, overlapping, or conflicting compliance procedures and what DOGMA intentions are pursuant to U.C.A. 40-8-5 (b) which states that, *the objective in coordination is to minimize the need for operators and prospective operators to undertake duplicating, overlapping, or conflicting compliance procedures.*

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I am amenable to posting a \$2,000 reclamation bond that SITLA requires for my proposed pilot test.

SITLA asserts that the wording in my Notice of Intent is unacceptable and have denied me permission to mine.

Whereas, apparently SITLA is requiring me to have attorney certification in order to be qualified to draw up my Notice of Intent before they will approve my proposed mining operation.

SITLA is demanding that I render archeological certification (whether or not artifacts exist upon my proposed pilot test) before they will consent to allow me to conduct a pilot test upon their land.

I am questioning the sufficiency of the SITLA archeological certification demand before proceeding to my examination of the SITLA required wildlife biological certification issues.

The Paleontological certification issue has not arisen between SITLA and me, as of this date, but SITLA has claimed the right to enforce Paleontological certification.

When my examination of the archeological, wildlife biological and Paleontological certification issues are successfully completed to my satisfaction, I plan to submit an application to the state Engineers Office to develop water.

After the certification issues are resolved I plan to submit a "Notice of Intent" to DOGMA as my next step in my attempt to get my proposed pilot test permitted.

Whereas, the state regulatory requirements, to date, seem excessive and oppressive to me and I am beginning to feel that I am being subjected to something like an inquisition/crusade/jihad/witch hunt to protect the sacred, sovereign lands from what is considered (by certain elements of our society) to be we lowly earth working sinful, wicked land plundering infidels. If my efforts to get my pilot test is any indication of future punishment, heaven knows what the regulatory demands will be in the event my proposed pilot test proves successful and I propose a larger mining operation (I hope it isn't akin to burning at the stake, the rack, the dungeon or banishment or such).

In DOGMA's evaluation of the proposed rules I heartily recommend to them a re-examination of the advice offered in Article I, section 27 of the Constitution of Utah, which provides that *Frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government*, whereas, The right to govern is derived from the consent of the governed" and it is we miners who are subject to penalties under the proposed new mining rules and who are the governed. For my part, if my examinations of the rules reveal that the minerals regulatory program is to prohibitive and oppressive, I will be forced to drop my mining plans in order to avoid unjust prosecution, poverty and humiliation.

I am aware of the fact that I do not have Fourteenth Amendment due process rights against the taking of private property in an administrative review process and that a party may seek judicial review only after exhausting all administrative remedies available. After studying the situation I have come to the realization that the administrative review process in this matter can be made to work, provided, that it is managed in a fair, just and equitable manner. The rule making process that DOGMA is pursuing affords to me the opportunity of setting forth some of my ideas that may be mutually beneficial to all parties concerned while at the same time making the process palatable to me.

Administrative Review Procedure

I have no problem with an administrative review procedure if it simplifies matters, affords me the opportunity to be heard and works toward clearing up the doubt and confusion surrounding the issues in an affordable, expeditious manner.

The review procedure, as drafted, seems okay to me as far as it goes but I am concerned because the review procedure seems to me to favor regulatory remedies and I feel gives to little consideration to the needs, wants, protections and remedies of the permittee and/or operator regarding their fundamental rights and remedies. My major concerns are addressed and explained further within this document.

Right To Question The Sufficiency Of A Rule Or Regulation (Right To Demur)

U.C.A. 40-8-4 (1) (a) provides DOGMA the authority to *determine the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul,*

withdraw, or amend an authority, right, permit, or license in adjudicative proceedings and U.C.A. 40-8-8 (1) (b) says that the board may respond to a request for agency action initiated by an affected person.

Under the present proposed DOGMA rules, if an operator wishes to question the sufficiency of a DOGMA rule, the only recourse for the accused is to act in good faith, take abatement measures, admit the fact that they violated a particular regulation go through the administrative review process and demand a judicial review.

Whereas, the beforesaid procedure is so complicated, time consuming and expensive that the sufficiency of very few rules & regulations, if any, will be questioned by a "real party in interest" who is subject to government penalty, and is actually and substantially interested in the subject matter, as distinguished from one who has only a nominal, formal, or technical interest in or connection with it.

The present DOGMA rules seems to me to be so ambiguous that if a permittee questions the sufficiency of DOGMA rules & regulations it can be interpreted to mean that that a permittee is violating the terms of their permit, whereby, the permit may be revoked and the mining operation terminated.

Whereas, the question arises, that by the act of the permittee questioning the sufficiency of a particular DOGMA rule & regulation is the accused subject to civil and other penalties plus revocation of their permit?

Whereas, I suggest that rules be devised and put into in place where the sufficiency of a particular DOGMA rule or regulation can be questioned without fear of reprisal.

Whereas, I suggest that the rules be adjusted to clarify the beforesaid matter.

Whereas, it seems to me that the beforesaid ambiguity violates the fundamental principle of our right as citizens to challenge an unsound law and is detrimental to the general safety and welfare of the citizens of the state.

It seems to me that my suggested beforesaid rule change agendum is in the best interest of the agency and the government of the State of Utah because bad and insufficient rules and regulations would be weeded out and more operable rules and regulations would be set into place that would be beneficial to all of the parties concerned.

Speaking for myself, I would be amenable to paying a reasonable fine and doing the mitigation measures attached to a possible existing bad and objectionable rule or regulation, if there were to be a procedure where I could pay the fine under protest and then be afforded the opportunity to petition DOGMA to waive, modify or abolish the rule or regulation that is questioned. ✓

Whereas, it seems to me that such a procedure is within the bounds of the law, is beneficial to both the mine operator and the agency because it makes for more fair, just and honest rules and regulations, and promotes harmony between the agency and the permittee or operator.

Wherefore, I respectfully request that in formulating new enforcement rules and regulations pursuant to this ongoing rule making process, that DOGMA incorporate rules whereby the permittee or operator is enabled to demur and question the sufficiency of DOGMA rules and/or regulations. ✓

Regulator Accountability

Under the present proposed rules the only legal remedy available to the operator to hold the individual regulator accountable for misbehavior is through judicial court procedures. Because of the "Doctrine of Sovereign Immunity" it is next to impossible for the operator to hold the individual regulator accountable for improper use of power and/or abusive behavior towards the operator in a judicial court. As proposed, the DOGMA regulations leave the operator exposed to the whims and vagrancy's of the individual regulator.

For purposes of maintaining discipline within the agency ranks, and in the interest of adapting reclamation requirements to the diversity of economic and social conditions related to the mining industry, I recommend that additional rules should be devised to enable the permittee or operator to lodge a complaint for regulatory misbehavior and if necessary bring the matter before the Board in an adjudicative proceeding. ✓

Whereas, I am suggesting such a procedure be included in the propose rules because it seems to me that it is in the agencies best interest to implement a procedure whereby agency personnel misbehavior can be brought to the attention of agency management for relief and resolution of an agency internal problem. Traffic police agencies along with many other agencies have had procedures in place for many years to deal with abusive behavior and the improper use of the police power.

It seems to me to be entirely proper and right that the agency and its board should be able to resolve such before said personnel misbehavior issues in such a way as to not burden the judicial courts with such agency internal housekeeping personnel matters.

Furthermore, possible improper use of power, if left unchecked, would be in conflict with U.C.A. 40-8-2 (3), because such said behavior is detrimental to the general safety and welfare of the citizens of the state and is harmful to economic, and social conditions in the areas where mining takes place.

Furthermore, it appears that the agency has the authority to implement the above said suggested procedure, pursuant to U.C.A. 40-8-4 (1) (a), that provides that *adjudicative proceedings are a division or board action or proceeding determining the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, permit, or license.*

Wherefore, I respectfully request that in formulating new enforcement rules and regulations pursuant to this ongoing rule making process, that DOGMA incorporate rules whereby the operator is enabled to lodge a complaint for relief with the agency for purposes of alleviating regulatory misbehavior and if necessary bring the matter before the agency and/or board in an adjudicative proceeding for purposes of preventing future regulatory **misbehavior**.

Other State Government Agency Cooperative Agreements, Certification And Enforcement Regulation Requirements And Penalties

I presume that DOGMA has a cooperative agreement with other government agencies, pursuant to U.C.A. 40-8-22 (1) which states that *the division shall cooperate with other state agencies, local governmental bodies, agencies of the federal government, and appropriate private interest in the furtherance of the purposes of this act.*

(2) *The division is authorized to enter into cooperative agreements with these agencies, as may be approved by the board, in furtherance of the purposes of this act . . . except that such actions shall not result in any delegation of powers, responsibility, or authority conferred upon the board or division by this act.*

Whereas, I am not privy to the terms of cooperative agreements between DOGMA and other government agencies.

Whereas, U.C.A. 40-8-5 (1) (a), provides that *the board and the division have jurisdiction and authority over all persons and property, public and private, necessary to enforce this chapter.*

Whereas, DOGMA is not required to enforce other agency rules pursuant to U.C.A. 40-8-5 (b) which says that *any delegation of authority to any other state officer, board, division, commission, or agency to administer any or all other laws of this state relating to mined land reclamation is withdrawn and the authority is unqualifiedly conferred upon the board and division as provided in this chapter, and*

U.C.A. 40-8-5 (2) (a) declares that, *where federal or local laws or regulations require operators to comply with mined land reclamation procedures separate from those provided for in this chapter, the board and division shall make every effort to have its rules and procedures accepted by the other governing bodies as complying with their respective requirements.*

Whereas, U.C.A. 40-8-2 (1), declares that the Utah Legislature finds that *a mining industry is essential to the economic and physical well-being of the state of Utah and the nation.*

Wherefore, I respectfully recommend that in formulating new enforcement rules, regulations and penalties pursuant to this ongoing rule making process, that DOGMA "exercise caution and restraint" and refrain from incorporating into their proposed rules and regulations other separate government agencies certification requirements and regulatory requirements, that discourage mining that is for purposes that lie outside of the stated authorities and intent of the Utah Mined Reclamation Act.

On page 4 of my copy of the draft inspection and enforcement rules, R647-6-102.2.17.113 provides that *any determination made under R647-6-102.2.18.112 will contain an appeal pursuant to R647-5*. Whereeto, R647-6-102.2.18.112 is not included in my copy of the draft inspection rules so I am unable at this time to make an informed comment on this particular proposed rule. However, I will protest the proposed rule in the event that the exclusion of R647-6-102.2.18.112 works to deprive the permittee or operator of their right to appeal.

Possible Typo Error, Proposed Rule R647-6-102.4.11

On page 5 of my copy of the draft inspection and enforcement rules R647-6-102.4.11 provides in the third sentence that *unless a location is requested and agreed to by the Division*. Whereeto, for what I consider to be vital and necessary clarification purposes I suggest that the sentence be changed to read "*unless a location is requested "by the permittee or operator" and agreed to by the Division*".

Summary

In my opinion our State Legislature has handed to DOGMA a hot potato because the actions taken by DOGMA concerning regulatory policies will have an impact on our states socio-economic environment for a long time to come and will have truly historic import. I feel that our state minerals regulatory program is at a crossroads at this particular point in time, whereas, DOGMA has been handed the task of deciding the balance between necessary and just rules and regulations, as opposed to oppressive rules and regulations.

Whereas, It seems to me that if DOGMA decides to opt for a policy of cooperation, involvement, responsiveness and consent with the "real parties in interest" (the governed who stand to be penalized for misbehavior), while at the same time exercising their awesome power that the legislature has given them to protect the ecological environment, that prosperity will reign and domestic tranquillity will be preserved. On the other hand if tyrannical and unresponsive policies prevail, poverty and unrest will in the end rule.

WHEREFORE, for purposes of protecting the economic and physical well-being of the state of Utah, the nation and of enabling DOGMA to carry out the duties assigned to them in a fair and impartial manner, I respectfully request that DOGMA Incorporate the following into their proposed rules:

1. The right of the permittee or operator to question the sufficiency of a DOGMA rule or regulation (the right to demur).
2. Provisions to enable the permittee or operator to lodge a complaint with the agency for regulatory misbehavior and if necessary and proper, to bring the matter before the Board in an adjudicative proceeding.

FURTHERMORE, I again urge DOGMA to exercise restraint in incorporating other government agencies certification requirements and regulatory requirements, that discourage mining, into the proposed DOGMA rules, regulations and penalties, whereby, DOGMA would then be acting in accord with their legislative directives.

I feel that if protections for the permittee or operator are not included in the proposed rules that there is a real danger that DOGMA procedures can become an instrument of oppression and that the administrative review procedure in particular will have many attributes of the old star chamber courts in old feudal times.

Please forgive any mistakes that I have made, the subjects under discussion are devilishly complicated and I am just an old miner, with limited training in such matters, trying to do the best that I know how to help out.

May providence bless you in your efforts to make a fair, just and equitable set of rules,

respectfully, 
Jerry Stocks